

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MADHU JAIN,

Plaintiff,

v.

CAPE ANN WHALE WATCH, INC.,

Defendant.

CIVIL ACTION NO. 05-11267-MEL

AMENDED ANSWER

Having obtained the written consent of opposing counsel to the amendment of its answer, the defendant, Cape Ann Whale Watch, Inc. (“Cape Ann”) hereby submits its amended response to the allegations of the plaintiff, Madhu Jain (“Jain” or “Plaintiff”), in numbered paragraphs corresponding to those of the Complaint, all pursuant to Fed. R. Civ. P. 8 and 15. If any headings appearing in the Complaint are repeated here, that repetition is solely for ease of reference and without prejudice.

1. This paragraph does not allege well-pleaded facts but instead sets forth a conclusion of law as to which Cape Ann is not obliged to respond. To the extent any response is deemed to be required, Cape Ann puts plaintiff to her proof.
2. Cape Ann, for the purposes of the present action only, elects not to contest that it is within the “long-arm” jurisdiction of the Court, but denies any suggestion of tortuous injury.
3. Cape Ann is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
4. Cape Ann, for the purposes of the present action only, elects not to contest the allegations of this paragraph.
5. Cape Ann, for the purposes of the present action only, elects not to contest that it operated a vessel named *Hurricane II*.

6. Cape Ann hereby restates and incorporates by reference its responses to the preceding Paragraphs as if set forth here at full length.

7. Denied.

8. Cape Ann elects not to contest that it charged a fee to individuals who wished to participate on a whale-watch trip aboard the *Hurricane II*. The remainder of this paragraph does not allege well-pleaded facts but instead sets forth a conclusion of law as to which Cape Ann is not obliged to respond. To the extent any response is deemed to be required, Cape Ann puts plaintiff to her proof.

9. Cape Ann is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

10. Cape Ann, for the purposes of the present action only, elects not to contest that it used a metal ramp equipped with rails as a means of boarding and exiting the vessel.

11. Denied.

12. Denied.

13. Denied.

14. Cape Ann denies the implication that the handrails on the ramp in question were inadequate. It is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

15. Cape Ann is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

FIRST AFFIRMATIVE DEFENSE

The claim of the plaintiff is barred or limited by the federal statutes for the limitation of shipowners' liability, including 46 U.S.C. (App.) §183 and associated sections of statute.

SECOND AFFIRMATIVE DEFENSE

If any injury alleged by the plaintiff is found, the cause of it was in whole or in part her own negligence, for which reason the claim is barred or limited.

Defendant reserves the right to assert additional affirmative defenses as may be appropriate in light of evidence developed in discovery.

WHEREFORE the Defendant Cape Ann demands that the Complaint be dismissed, that all relief sought against it be denied, that it may have its costs of defense of this matter, and that it may have such other relief as the Court may deem just.

CERTIFICATE OF SERVICE: By my signature below, I hereby certify that on the date set forth below, I have electronically filed this document with the Clerk of Court using the CM/ECF system, which will send notification of such filings(s) to the attorneys designated below as ECF recipients, and I hereby certify that on the same date, I have mailed, via United States Postal Service, the document(s) to the non-registered participants reflected below as being provided copies by mail.

Dated: October 20, 2005

served upon:

Jeffrey C. Coniaris, Esq., BBO#555907 (*By First Class Mail*)
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CAPE ANN WHALE WATCH, INC.

By its attorneys,

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